IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WP(C).No. 26489 of 2007(C)

EP.363/2006 of PRL.S.C.,THALASSERY
OS.57/2000 of SUB COURT, TIRUR

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PETITIONER:

MANIYIL VEETIL P.K.ALI,
S/O.MAMMU, AGED 58 YEARS, THALASSERY TALUK,
PUNNOL AMSOM DESOM, P.O.KURACHI, KANNUR DT.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENT:

CHEMMANGATTU KUNJIKUTTAN,
S/O.SADANANDAN, AGED 40 YEARS,
PONNANI TALUK, OTHALOOR AMSOM, CHIYANNOOR DESOM,
P.O.KOKKOOR, MALAPPURAM DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.N.KRISHNAN, J

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W.P.(C) No.26489 OF 2007

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Dated this the 5th day of September 2007

JUDGMENT

This writ petition is filed for a direction to the Sub Court, Thalassery to consider the question of executability of the decree. It is extracted in the writ petition that on 4.8.2007 the court has directed issuance of arrest warrant against the first respondent. Learned counsel for the petitioner submits that though he has filed a counter statement in June, 2007, a copy of which is produced as Ext.P1, the court has not considered the same. A perusal of the said counter would reveal that the first judgment debtor has raised a contention that the decree holder is not entitled to get the decree executed for the reasons stated in paragraphs 2 and 3 of the counter statement. The executing court unfortunately has not adverted to those facts at all and had ordered arrest against the first respondent on the ground that his capacity to pay decree debt is proved. Whatever it may be, when a contention is raised unless it is not pressed, the court is bound to consider it and pass appropriate orders.

Therefore the order directing issuance of arrest warrant against the

first respondent is set aside and the court below is directed to consider the objection raised by the first respondent after hearing the decree holder as well. Since I am disposing of the matter at the admission stage itself, the court below shall give notice to the decree holder, hear them and dispose it of in accordance with law.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-